

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Communications Assistance for Law)	ET Docket No. 04-295
Enforcement Act and Broadband Access and)	
Services)	RM-10865

REPLY COMMENTS OF

WASHINGTON UNIVERSITY IN ST. LOUIS

Introduction and Summary

Washington University respectfully submits these reply comments in response to the Further Notice of Proposed Rulemaking adopted in the above-captioned docket.¹ Washington University supports the comments filed by the Higher Education Coalition and submits this reply to illustrate several points based on its own experience and circumstances.

Washington University believes that the FCC should make clear that the private networks operated by colleges, universities and research institutions are and should be exempt from CALEA and that the application of CALEA may impose significant financial constraints upon the University which will further impact our students, faculty and researchers.

Washington University has received very few requests from law enforcement agencies but, when properly served, the University has quickly responded to the request.

Washington University believes that its network and the procedures currently in place to manage and monitor it are more than adequate to permit the rapid response to legal requests.

¹ *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, FCC 05-153 (rel. Sept. 23, 2005) (“*Order*”).

Discussion

1. **The FCC Should Clarify That Higher Education Networks Are Exempt from CALEA.**

Broadband networks operated by higher education and research institutions are not subject to CALEA because the statute expressly exempts “equipment, facilities, or services that support the transport or switching of communications for private networks.” 47 U.S.C. § 1002(b)(2)(B). Although the Commission acknowledged in the *Order* that private educational networks are exempt from CALEA, it introduced ambiguity by stating: “To the extent . . . that [such] private networks are interconnected with a public network, either the PSTN or the Internet, providers of the facilities that support the connection of the private network to a public network are subject to CALEA” *Order* at ¶ 36, n.100.

Washington University’s connectivity to the public Internet is via a leased fractional gigabit Ethernet circuit (300Mb/s). Data traffic from the University travels from the core data network at two University campus locations over redundant leased metropolitan area network circuits to redundant hardware collocation facilities in downtown St. Louis. The hardware that forwards the data traffic to the public Internet is located in a space that is co-leased by Washington University and the St. Louis Internet Access Consortium (SLIAC). SLIAC is a consortium of educational and research institutions in the St. Louis region.

A 6 Mb/s backup connection to the public Internet has been provisioned through a local cable (catv) company.

Connectivity to the Internet2 research and education network is provided by a leased OC-3 (155Mb/s) circuit between SLIAC hardware and the Indiana University Gigapop. The same infrastructure that forwards public Internet traffic carries Internet2 traffic.

Washington University is concerned that the institution, as well as the education and research consortium, could be deemed under the Order to “support” such a “connection” and thus become subject to CALEA.

The Commission should clarify that only commercial entities are covered by the language in footnote 100, in light of the clear statutory exemption of private network operators. Alternatively, the Commission should invoke its discretionary authority under Section 102(8)(C)(ii) of CALEA to exempt higher education and research institutions from compliance with the forthcoming assistance-capability requirements. Such an exemption is necessary to remain faithful to congressional intent and to avoid imposing unnecessary burdens on colleges, universities, and research institutions.

Contrary to the suggestion by the Department of Justice that “no exemptions are appropriate based on the current record,” DOJ Comments at 11, the Higher Education Coalition has defined a narrow class of private network operators that should be exempt from CALEA for all the reasons contained in the Coalition’s comments and in these reply comments. The absence of existing compliance standards does not argue for postponing exemption determinations, but instead makes a prompt exemption more critical. Because the Commission has established an 18-month compliance deadline, Washington University must begin planning *now* to set aside funds for possible CALEA compliance. Far from being premature, an exemption for higher education and research institutions is urgently necessary.]

2. Washington University’s Experience with and Response to Surveillance Requests Demonstrates the Absence of Any Need to Impose CALEA Requirements on Higher Education Networks.]

- Washington University has received only one surveillance request from a law enforcement agency in the last 6 ½ years;

- Upon the University's General Counsel being served with appropriate legal documents, the University immediately responded to that request, as it will continue to respond to legal requests from law enforcement personnel;
- The University's internal procedures ensure that it will make all reasonable effort to continue its cooperation with any future surveillance requests.
- Washington University's experience helps demonstrate that its existing procedures are more than adequate to ensure compliance with lawful surveillance requests, in light of both the infrequency of such requests and higher education institutions' history of full cooperation. Imposing burdensome new assistance-capability requirements under CALEA is simply not necessary to serve the interests of law enforcement.]

3. A Broad Application of CALEA Would Impose Significant Burdens on Washington University and Divert Funds from Its Critical Educational Mission.

As noted above, Washington University believes that CALEA does not apply to it under the plain terms of the statute and under the most reasonable reading of the *Order*. If the Commission were to apply the language in footnote 100 of the *Order* broadly and conclude that higher education networks such as Washington University's comply with some or all assistance capability requirements, such a ruling would impose significant and unwarranted burdens.

{If the *Order* were interpreted by DOJ or the FCC to require interception of communications by particular users at points *within* the Institution's network, Washington University anticipates incurring significant costs in both re-architecting and implementing changes to its internal network.

- Consulting to support re-architecting both the core and sub-networks are anticipated to cost in the hundreds of thousands of dollars;

- Replacement hardware and software is expected to cost in the millions;
- Personnel to develop policy and procedures, to train network and systems administrators, and to manage and maintain the network will add significant cost;
- It is unknown, at this time, what the implications of CALEA compliance will mean to adherence to other regulations imposed on Universities, research and health care institutions (e.g., HIPAA, FERPA, etc.)
- It is assumed that the cost burden will be borne by the students through increased tuition or other fees.

In short, if the FCC were to apply CALEA broadly to higher education networks — contrary to the text of the statute — such a ruling would impose significant burdens that far outweigh its putative benefits. The Commission accordingly should exempt higher education institutions and research networks from CALEA, if it considers them subject to the assistance-capability requirements in the first place.

{Moreover, if the FCC applies CALEA to private educational networks at all, it should construe the *Order* as applying *at most* to the Internet connection facilities at the edge of the network, for the reasons stated by the Higher Education Coalition. In addition, as proposed by the Coalition, any such requirement should be phased in over a five-year period as existing equipment is replaced in the normal course of events.}]

Conclusion

Washington University respectfully requests that the Commission clarify that private networks operated by higher education and research institutions are not subject to CALEA, or alternatively grant an exemption under Section 102(8)(C)(ii) of CALEA.

Respectfully submitted,

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